

Approved For Release 2005/03/15 : CIA-RDP62-00631R000300160020-1

3 September 1958

OGC Has Reviewed

MEMORANDUM FOR THE RECORD

SUBJECT: Reemployment Rights of Former Employees

1. A question has been raised by the Office of Personnel about the right to reemployment by this Agency of a former employee who resigned to accept employment with the International Cooperation Administration (ICA) in an overseas post. The immediate problem concerns a recognition by this Agency of reemployment rights of who resigned in June to take a position with ICA. STATINTL

2. In summary, under sections 1787 and 928 of Title 22, United States Code, has reemployment rights with this Agency so long as he remains an employee of ICA in an overseas post. Upon termination of his employment with ICA he may exercise his right to reemployment and be entitled to the same position he occupied at the time of his resignation from CIA or to a corresponding or higher position. The facts and applicable law follow. STATINTL

3. The effective date of the resignation of from the Central Intelligence Agency was 28 June 1958. The reason given for his resignation was "to accept other federal employment." On 26 June, was given an Excepted Appointment - Foreign Service Reserve Limited - in the International Cooperation Administration effective 30 June 1958, the Monday following his effective resignation date from CIA which was a Saturday. By a letter dated 27 June 1958, ICA informed the CIA Director of Personnel of appointment and referred to a telephone conversation between of CIA and Mrs. Nickens of ICA regarding the effective date of appointment. In this letter, ICA requested an indication of the recognition by CIA of statutory reemployment rights. In reply by letter dated 15 July (concurrent in by OGC) CIA's Director of Personnel wrote that this Agency "cannot agree to grant reinstatement rights, basing this argument on the fact that resigned from CIA on 28 June and therefore his subsequent appointment on 30 June by ICA was not a transfer or assignment to ICA with the consent of the head of CIA, as required by the Mutual Security Act of 1954 (Section 527c; Section 1787(c), Title 22, USC) and the Foreign Service Act of 1946 (Section 528; Section 928, Title 22, USC.) ICA replied by letter of 4 August stating that had reemployment rights with CIA "whenever his present employment with ICA is STATINTL

4. The pertinent question is: Does a former CIA employee have reemployment rights with CIA if he resigned to accept employment with ICA and was appointed to an ICA Foreign Service Reserve position without a break in service? Apparently there are several former CIA employees now with ICA to whom the [redacted] situation might apply.

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6. The District Attorney's office for the District of Columbia which represented the defendants in this action filed several memoranda of points and authorities in the case. In support of its motion for summary judgment filed on 18 March 1957, the District Attorney stated that section 928 of Title 22, United States Code provided that upon termination of the assignment of a Reserve Officer assigned from any Government agency such person shall be entitled to reinstatement in the Government agency by which he is regularly employed, in the same position he occupied at the time of assignment or in a corresponding or higher position. In attempting to show that an assignment was different from a transfer or an appointment the District Attorney contended that an assignment is subject to section 922, Title 22 which provides that persons may be assigned to the Foreign Service Reserve only with the consent of their respective Agency heads. He also contended that no benefits were provided to persons appointed to the Foreign Service Reserve unless they were government employees who were assigned thereto with the consent of their agencies.

7. Judge Pine, before whom the cause was tried, apparently took the District Attorney's argument into serious consideration but in his memorandum opinion which was [redacted] Judge Pine stated in part that "I have come to the conclusion that on the facts, plaintiff is entitled to the relief sought under sections 1508 and 928 of Title 22, United States Code. The fact that the Personnel Operations Officer of the Department of Commerce, in his Notification of Personnel Action, stated that reemployment rights were denied, could not abrogate plaintiff's rights under the provisions of the statutes above referred to." By this decision which was not appealed the fact that an employee does not have the consent of his agency head when he resigns to take employment with ICA has no bearing on reemployment upon the termination of his ICA employment, and under the cited statutes he must be reemployed.

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8. Section 1508(a)(2) of Title 22 which was in force at the time Prosterman left the Department of Commerce in 1952 was as follows:

"For the purpose of performing functions under this subchapter outside the continental limits of the United States the Administrator of Economic Cooperation may recommend the appointment or assignment of persons, and the Secretary of State may appoint or assign such persons, to any class in the Foreign Service Reserve or Staff for the duration of operations under this subchapter, and the Secretary of State may assign, transfer, or promote such persons upon the recommendation of the Administrator. Persons so appointed to the Foreign Service Staff shall be entitled to the benefits of section 928 of this title."

Section 1508 of Title 22 was repealed on 26 August 1954 and section 1787(c) of Title 22 was enacted. Section 1787(c)(1) as amended reads:

"For the purpose of performing functions under this chapter outside the continental limits of the United States, the Director of ICA may employ or assign persons, or authorize the employment or assignment of officers or employees of other United States Government agencies . . . and persons so employed or assigned shall be entitled, except to the extent that the President may specify otherwise in cases in which the period of the employment or assignment exceeds thirty months, to the same benefits as are provided by section 928 of this title for persons appointed to the Foreign Service Reserve"

Section 928:

"Upon the termination of the assignment of a Reserve officer assigned from any Government agency, such person shall be entitled to reinstatement in the Government agency by which he is regularly employed in the same position he occupied at the time of assignment, or in a corresponding or higher position. Upon reinstatement he shall receive the within-grade salary advancements he would have been entitled to receive had he remained in the position in which he is regularly employed under subsection (d) of section 667 of Title 5, or any corresponding provision of law applicable to the position in which he is serving. A certificate of the Secretary that such person has met the standards required for the efficient conduct of the work of the Foreign Service shall satisfy any requirements as to the holding of minimum ratings as a prerequisite to the receipt of such salary advancements."

9. At present the thirty month requirement mentioned in section 1787 is considered by ICA as permissive and until implemented by an Executive Order, an ICA employee who has been employed by that agency for any period of time has reemployment rights with his former agency. However, according to Miss Edna Boorady of ICA (code 113 x3833) an Executive Order is expected to be promulgated in the near future which will give reemployment rights only to those ICA employees who have been employed for thirty months or less in the Foreign Service Reserve overseas.

10. Congress in passing the Mutual Security Act of 1957 recognized the need for ICA to attract competent personnel, and at the same time took note of the management problems entailed in the reinstatement of an employee to his former agency. In a report on the Mutual Security Act of 1957 of the House Foreign Affairs Committee (House Report No. 776, 85th Congress, 1st Session) at page 40 it was stated that under the provisions of the Mutual Security Act "all persons appointed or assigned from other government agencies to overseas positions under ICA, with or without the consent of the original agencies, are automatically entitled to rights or reinstatement in their original agencies upon conclusion of their employment under the act." The committee noted that "without some protection of a statutory reemployment right employees would not consent to fill overseas posts." The Senate Mutual Security bill preserved reemployment rights for the first two years of an employee's appointment. The House increased the time period to 2½ years so as to allow for normal processing, travel time and leave. STATINTL



Office of General Counsel

cc: Office of Personnel

OGC:MCM:jem

✓ Subject
Signer
Chrono